

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

ATLANTIC CITY MEDICAL CENTER

Employer

and

EUGENE R. WELLINGTON, an Individual

Case 4–RD–1906

Petitioner

and

TEAMSTERS UNION LOCAL 331,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Union Involved

DECISION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer operates two acute care hospitals in New Jersey, one in Atlantic City (the Atlantic City Hospital) and one in Pomona (the Pomona Hospital). The Union

Involved currently represents a unit of stationary engineers, senior maintenance mechanics, journeyman maintenance mechanics, general maintenance mechanics and biomedical technicians at both hospitals. The Union Involved contends that the Petitioner, Eugene Wellington, is a supervisor within the meaning of the Act and therefore the petition must be dismissed.

Wellington, a senior maintenance mechanic, is included in the unit represented by the Union Involved and has been employed by the Employer at the Pomona Hospital since June 1975. There are currently eight other individuals in the maintenance department there, including Walter Keen, another senior maintenance mechanic.¹ Wellington has extensive experience in electrical work and fire science, and Keen is a licensed plumber. Wellington and Keen both instruct and assist other employees in tasks in their areas of specialization.

For about the last three or four years, Wellington has filled out monthly schedules for the maintenance employees at the Pomona Hospital and submitted them to Director of Facilities Management George Logan for approval. These schedules generally remain the same from month to month other than when employees have scheduled vacations or other time off. Wellington is listed on the schedule with the other employees. According to Wellington and Logan, when other maintenance employees request time off, Wellington checks the schedule to ensure that there will be adequate coverage² and informs Logan, who must approve the request. However, the record includes several "Request for Time Off" forms, which were initialed only by Wellington, not by Logan. Employees are permitted to switch days off with Logan's approval.

On a regular basis, Logan gives preventive maintenance work orders and routine maintenance assignments to Office Manager Olga Brill for distribution to the maintenance employees. Brill also receives work orders from elsewhere in the facility by e-mail and either gives them directly to maintenance employees or gives them to Wellington to distribute. Additionally, emergency calls are transmitted to maintenance employees by beeper, and Wellington and other employees take turns carrying the beeper. When they receive a call, they either perform the work themselves or ask other employees for assistance. Employees sometimes switch assignments on their own if they believe someone is better suited to a task than the person to whom it was assigned. In emergency situations, Wellington has the authority to tell an employee to stop performing an assigned task and move to another task if he thinks it is more important. Keen also has this authority.

If it snows more than two inches, Wellington may call in other maintenance employees to remove the snow, but he must first notify the nursing supervisor. Maintenance employees on other shifts also have this authority and have called in Wellington, among other employees, for snow removal. During the snow removal process Wellington has instructed employees as to what equipment to use. If an employee calls out sick and Logan is not at work, Wellington has the authority to call other employees to see if they are available to come in to work. If an employee asks Wellington about a problem and Wellington cannot fix it, Wellington may tell the employee to call in a contractor. In the year 2000, Logan was out on sick leave for several months, and during this period Wellington handled the day-to-day operation of the Maintenance Department while the Human Resources Department dealt with all personnel matters.

¹ No party contends that Keen is a supervisor.

² The record does not establish how Wellington determines whether there is adequate coverage.

Wellington is the highest-paid individual in the bargaining unit at the Pomona Hospital, due to his lengthy tenure of employment.³ He is paid on an hourly basis, while Logan is salaried. As a 25-year employee of the Employer, pursuant to hospital policy, he is entitled to an extra week of vacation each year and free meals in the hospital cafeteria. Otherwise, he receives the same benefits as other bargaining unit employees. Wellington and Keen work from 7:00 a.m. to 3:00 p.m. during the week and rotate weekends, while Logan works from 8:30 or 9:00 a.m. until 5:00, 6:00 or 7:00 p.m. as needed. At maintenance department meetings, Wellington and Keen sit in the front of the room with Logan and Brill. Wellington does not attend department head or supervisory meetings.

The record does not reflect that Wellington has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, or reward employees or effectively to recommend any of these actions. He has been involved in only a single incident of discipline. During late June or July 2000, when Logan was on leave, a loud disagreement arose between two maintenance employees. Wellington brought the two employees to the office of the Human Resources Manager, and the Human Resources Manager verbally warned both of them.

A finding of supervisory status is warranted only where the individuals in question possess one or more of the indicia set forth in Section 2(11) of the Act. *The Door*, 297 NLRB 601 (1990); *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Juniper Industries*, 311 NLRB 109, 100 (1993). The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care Inc.*, 121 S.Ct. 1861, 1866-1867 (2001); *Fleming Companies, Inc.*, 330 NLRB No. 32, fn. 1 (1999). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, supra, 295 NLRB at 490. The exercise of some authority in a merely routine clerical or perfunctory manner does not confer supervisory status on employees. *Juniper Industries*, supra, 311 NLRB at 110. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority. *Food Store Employees Local 347 v. NLRB*, 422 F.2d 685 (D.C. Cir. 1969); *NLRB v. Security Guard Service, Inc.*, 384 F.2d 143 (5th Cir. 1967).

The legislative history of Section 2(11) makes it clear that Congress intended to distinguish between employees performing minor supervisory duties and supervisors vested with genuine management prerogatives, and did not intend to remove individuals in the former category from the protections of the Act. S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1974), reprinted in 1 Legis. Hist. 407, 410 (LMRA 1947). The legislative history also shows that Congress considered true supervisors to be different from lead employees or straw bosses that merely provide routine direction to other employees as a result of superior training or experience. *Id.*, reprinted at 1 Legis. Hist. at 410 (LMRA 1947). The legislative history also shows that Congress considered true supervisors to be different from lead employees or straw bosses that merely provide routine direction to other employees as a result of superior training or experience. *Id.*, reprinted at 1 Legis. Hist. at 410 (LMRA 1947). *Ten Broeck Commons*, 320 NLRB 806, 809 (1996). An individual will not be found to be a supervisor unless he or she has a “kinship to management.” *Advanced Mining Group*, 260 NLRB 486, 507 (1982), enf. mem. 701 F.2d 221

³ The record does not indicate the wage rate of Wellington or any other employee.

(D.C. Cir. 1983), quoting *NLRB v. Security Guard Service*, 384 F.2d 143, 149. See *Adco Electric*, 307 NLRB at 1120 enfd. 6 F.3d 1110 (5th Cir. 1993).

The Union Involved contends that Wellington is a supervisor based on his authority to prepare employee monthly schedules, assign work, guide employees in performing work, and discipline employees. With respect to Wellington's preparation of monthly schedules, while the record shows that he ensures adequate maintenance staffing at the Pomona Hospital, it does not indicate how he makes this determination. He changes the schedule from month to month but does so only to accommodate employee time off requests, and Logan must give final approval of these schedules. There is no evidence that Wellington exercises independent judgment in performing these tasks. I find that Wellington's preparation of monthly schedules does not confer supervisory status. See *Quality Chemical, Inc.*, 324 NLRB 328, 330 (1997); *Lakeview Health Center*, 308 NLRB 75, 79 (1992). Logan determines employee work assignments, and Wellington merely transmits these work orders at times to the maintenance employees. While he has sometimes asked employees to change from one task to another, these situations have generally involved the need to perform emergency work. In snow removal situations, Wellington may direct employees to use specific tools or equipment, but there is no evidence that he uses independent judgment rather than simply dividing the tasks. Employees look to Wellington for leadership and instruction because of his greater experience and knowledge, but there is no evidence that he regularly directs them in performing their duties. In general, I find that Wellington's responsibilities with respect to the assignment and direction of employees do not demonstrate the exercise of independent judgment, but rather involve routine decisions typical of leadperson positions that are found by the Board not to be statutory supervisors. See e.g., *Jordan Marsh Stores Corp.*, 317 NLRB 460, 467 (1995); *Brown & Root, Inc.*, 314 NLRB 19, 21-22 (1994). Wellington has not exercised any disciplinary authority; on one occasion he merely brought a dispute between co-workers to the Human Resources Manager when Logan was absent. Wellington is hourly paid and shares the same benefits as other employees, except for those benefits that he receives based on his longevity. Wellington's senior maintenance mechanic position has been included in the bargaining unit, and the Petitioner does not contend that the other senior maintenance mechanic, Keen, is a supervisor. Based on the foregoing, I find that the Union Involved has not met its burden of demonstrating that Wellington possesses any of the indicia of supervisory authority listed in Section 2(11) of the Act. *Capital Cleaning Contractors, Inc.*, 322 NLRB 801, 808 (1996), enfd. in relevant part, 146 F. 3d 999 (D.C. Cir. 1998); *S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996).

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time and pool employees employed by the Employer at its 1925 Pacific Avenue, Atlantic City, New Jersey and Jimmie Leeds Road, Pomona, New Jersey facilities in the facilities management and biomedical services departments in the following classifications: stationary engineer, senior maintenance mechanic, journeyman maintenance mechanic, general maintenance mechanic and biomedical technician, excluding all other employees, managers, directors, confidential employees, guards and supervisors as defined in the Act.

The Union Involved has filed unfair labor practice charges against the Employer in Cases 4-CA-30317, 4-CA-30333, and 4-CA-30346, which are currently under investigation. The allegations encompassed by these charges, if proved, may preclude the holding of a fair election. Therefore, no election can be conducted until the investigations are complete. Upon disposition of these cases, I may, if appropriate, issue a Direction of Election by secret ballot among the employees in the appropriate unit, as set forth above, at a time and place to be set forth in a Notice of Election to be issued subject to the Board's Rules and Regulations.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **October 29, 2001**.

Signed: October 15, 2001

at Philadelphia, PA

/s/_____
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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